

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

|  |   |                            |
|--|---|----------------------------|
| In The Matter of R.S.,                           | ) |                            |
| Petitioner                                       | ) |                            |
| And  | ) | <b>CAUSE NO. 090814-61</b> |
| The Indiana High School Athletic Assoc. (IHSAA), | ) |                            |
| Respondent                                       | ) |                            |
|  | ) |                            |
| Review Conducted Pursuant to                     | ) | <b>Closed Hearing</b>      |
| I.C. 20-26-14 <i>et seq.</i>                     | ) |                            |

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

**Procedural History**

Petitioner is a seventeen-year-old senior (d/o/b November 24, 1991) currently attending Culver Academies, a nonpublic high school. He lives with his family in Toronto, Canada. He attended Lowell Whiteman School in Steamboat Springs, Colorado, an outward bound type program, for his freshman year during the 2005-2006 school year. He then attended Bayview Glen High School in Toronto, Canada, during the 2006-2007 school year. Petitioner did not participate in interscholastic athletics during either his freshman or sophomore years. Petitioner's older brother attended Culver Academies and Petitioner expressed a desire to attend school with his brother. Petitioner's parents enrolled him at Culver Academies beginning with the 2007-2008 school year.

Petitioner played on the junior varsity football team during the 2007-2008 school year and the varsity team during the 2008-2009 school year at Culver Academies. In May 2009, Petitioner's father requested a determination as to Petitioner's eligibility status for the upcoming school year. Blake Ress, IHSAA Commissioner, informed Culver Academies that Petitioner would be athletically ineligible beginning with the fall 2009 semester and thereafter.

On May 15, 2009, Petitioner sought review of the Commissioner's decision by Respondent's Review Committee. The Review Committee conducted its review on August 5, 2009, and issued its decision on August 13, 2009, upholding the Commissioner's decision declaring Petitioner ineligible to participate in interscholastic athletics.

## APPEAL TO THE CASE REVIEW PANEL

Petitioner, by counsel, appealed to the Indiana Case Review Panel<sup>1</sup> on August 17, 2009. Petitioner requested an expedited hearing and that the hearing be closed to the public. On August 18, 2009, the parties were notified of their respective hearing rights. The record from the investigation and review by Respondent was requested and received. The record was copied and provided to each participating member of the CRP. Hearing was set for August 25, 2009, in the offices of the Indiana Department of Education, Indianapolis, Indiana. The parties received timely notice of the proceedings.

On August 25, 2009, the CRP convened.<sup>2</sup> Petitioner and his parents appeared in person. Respondent appeared by counsel. Prior to the hearing, Petitioner submitted seven exhibits. Copies were made and provided to Respondent and members of the CRP. Respondent objected on the basis of hearsay. The CRP admitted the documents over Respondent's objection, noting that the resulting order may not be based solely upon the hearsay evidence.<sup>3</sup>

Testimony was provided under oath or by affirmation. In consideration of the testimony and record, the following Findings of Fact and Conclusions of Law are determined.

### FINDINGS OF FACT

1. Petitioner is a seventeen-year-old senior (d/o/b November 24, 1991) currently attending Culver Academies, a nonpublic high school. He resides with his parents in Toronto, Canada.
2. Petitioner enrolled at Culver Academies at the start of the 2007-2008 school year. Prior to enrolling at Culver Academies, Petitioner attended Lowell Whiteman School for the 2005-2006 school year and Bayview Glen High School for the 2006-2007 school year.
3. Petitioner contracted mononucleosis during his first year at Lowell Whiteman School and had to return home to Toronto for five weeks. Although he initially received incompletes for his coursework, he was able to make up the work and received credit for his courses.

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<sup>1</sup> The Case Review Panel (CRP) is a nine-member adjudicatory body appointed by the Indiana State Superintendent of Public Instruction. The State Superintendent or her designee serves as the chair. The CRP is a public entity and not a private one. Its function is to review final student-eligibility decisions of the IHSAA when a parent or guardian so requests. Its decision does not affect any By-Law of the IHSAA but is student-specific. In like manner, no by-law of the IHSAA is binding on the CRP. The CRP, by statute, is authorized to uphold, modify, or nullify any student eligibility decision by the Respondent. I.C. 20-26-14-6(c)(3).

<sup>2</sup> Five members were present: Joan L. Keller, Chair; Edwin Baker; Christi L. Bastnagel; Matthew Rager; and Brenda Sebastian.

<sup>3</sup> I.C. 4-21.5-3-26(a).

4. During the 2006-2007 school year Petitioner participated in a foreign exchange program for five or six weeks and traveled to Germany. He did not take classes during that time.
5. When Petitioner enrolled at Culver Academies, he enrolled as a sophomore even though he had attended high school for the two previous school years.
6. The Lowell Whiteman School did not offer interscholastic sports. Bayview Glen High School did offer a number of interscholastic sports, although it did not offer football. Petitioner chose not to participate in interscholastic sports at Bayview Glen High School.
7. Culver Academies requires that all students participate in either interscholastic or intramural sports.
8. Petitioner participated on the junior varsity football team during the 2007-2008 school year. He participated on the varsity football team during the 2008-2009 school year.
9. Although Petitioner has been enrolled in high school for four years, he does not have enough credits to graduate and requires another semester to meet graduation requirements.
10. After investigation, the Commissioner of the IHSAA determined Petitioner to be ineligible pursuant to **Rule 12-2<sup>4</sup>** of the IHSAA General Eligibility Rules. This determination was upheld by the IHSAA Review Committee.

#### CONCLUSIONS OF LAW

1. Although the IHSAA, the Respondent herein, is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are "state action" and for this purpose makes the IHSAA analogous to a quasi-governmental entity. IHSAA v. Carlberg, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998). The Case Review Panel has been created by the Indiana General Assembly to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-26-14 *et seq.* The Case Review Panel has jurisdiction when a parent, guardian, or eligible student invokes the review function of the Case Review Panel. In the instant matter, the IHSAA has rendered a final determination of student-eligibility adverse to the student. Petitioner has timely sought review. The Case Review Panel has jurisdiction to review and determine this matter. The Case Review Panel is not limited by any by-law of Respondent. The Case Review Panel is authorized by statute to either uphold, modify, or nullify the Respondent's adverse eligibility determination.

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<sup>4</sup> Respondent has promulgated a series of by-laws as a part of its sanctioning procedures for interscholastic athletic competition. (All references are to the 2009-2010 by-laws of Respondent.)

2. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.
3. **Rule 12-2** provides that “[a]fter enrollment in the 9<sup>th</sup> grade for 15 or more school days, students shall be eligible for no more than four (4) consecutive years, or the equivalent. (e.g., 12 semesters in a trimester plan, etc.)”
4. Petitioner argues that to deny his request for eligibility would constitute a hardship. Respondent argues that the hardship rule does not apply to **Rule 12-2** (see **Rule 17-8.1**). The only exceptions to the application of the four year eligibility rule entail injury or illness which necessitate the student’s complete withdrawal from the school or prohibits attendance for that semester and the student does not receive any academic credit for that semester (**Rule 12-3**) or disability pursuant to **rule 17-9**. None of these exceptions apply to Petitioner.
5. The CRP is not bound by either the By-Laws addressing the CRP nor by the language of the “Hardship Rule” that proscribes its application to the four year rule. However, because the CRP must conduct its proceedings pursuant to the Administrative Orders and Procedures Act (AOPA), I.C. 4-21.5-3, it is not free to ignore the By-Laws, especially ones that serve an obvious rational purpose such as the four year rule, and make student-specific decisions based upon whimsy. The burden remains with Petitioner to provide substantial evidence that would justify piercing the four year rule and permitting Petitioner to participate in the particular athletic event that is sanctioned by Respondent.
6. Petitioner and his family chose for Petitioner to attend the Lowell Whiteman School, Bayview Glen High School, and to participate in a foreign exchange program entailing travel to Germany. These experiences enriched Petitioner’s life and education, but also contributed to Petitioner requiring more than four academic years to complete high school graduation requirements. Such voluntary choices do not constitute a hardship under **Rule 17-8.4**,<sup>5</sup> nor provide justification to pierce the four year rule.

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<sup>5</sup> **Rule C-17-8.4: General Consideration**

a. Ordinary cases shall not be considered hardship; rather, the conditions which cause a violation of a Rule, a disregard of a decision or directive made under these Rules, or the failure to meet the eligibility requirements must be beyond the control of the school, the coach, the student, the parents and/or the affected party.

### ORDER

Respondent's determination that Petitioner has had four years of athletic eligibility available since his fall 2005 enrollment in high school and has used all of his athletic eligibility as of the end of the spring 2009 semester is affirmed. This was determined by a vote of 5 - 0.

DATE: September 3, 2009

/s/ Joan L. Keller

Joan L. Keller, Chair  
Case Review Panel

### APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has thirty (30) calendar days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5.